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Time Limits on Trials

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Federal courts impose time limits on trials—restricting the number of hours per side for all examination, cross-examination, and argument—often enough that case law has developed to guide trial judges faced with the need to set such rules. Time limits are less common in state court, however, and there are few North Carolina appellate decisions, none of which directly address time limits, that can advise superior and district court judges. Federal case law is useful in state court, though, because it is based on the same concept of inherent authority to control the court docket and manage caseflow, and on the same rules of procedure and evidence, that exists in state law.

This bulletin provides a brief review of federal case law on setting time limits and a discussion of the more general state case law on controlling the presentation of evidence at trial. It concludes with suggestions for how trial judges might apply time limits in state court so as to avoid reversal on appeal.

Time Limits in Federal Court

Source of court's authority

A federal district court's authority to set time limits is based on its "inherent power 'to control cases before it,' provided it exercises the power 'in a manner that is in harmony with the Federal Rules of Civil Procedure.'" Duquesne Light Co. v. Westinghouse Elec. Corp., 66 F.3d 604, 609 (3rd Cir. 1995) (quoting G. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 652 (7th Cir. 1989)). Federal courts also cite several rules to support the authority. Rule 1 of the Federal Rules of Civil Procedure states the rules of civil procedure are to be construed to secure the speedy and inexpensive disposition of each case. Federal Rule of Evidence 102 says the rules of evidence are to be construed to eliminate unjustifiable expense and delay, and Federal Rule of Evidence 403 allows exclusion of even relevant evidence based on undue delay or waste of time. Federal Rule of Evidence 611 directs the court to control the presentation of evidence to "avoid needless consumption of time."

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The basis for setting time limits in criminal cases is the same as in civil court. "Although it may be more common for a district court to impose time limits in a civil trial, setting time limits in a criminal trial is equally authorized." United States v. Cousar, 2007 WL 4456798 (W.D. Pa. 2007). "Modern courts recognize that the court's time is 'a public commodity which should not be squandered.'" United States v. Reaves, 636 F. Supp. 1575, 1578 (E.D. Ky. 1986) (quoting D. Louisell and C. Mueller, *2 Federal Evidence* § 128 (1985)). The balancing of interests requires consideration of additional interests in criminal cases. "Certainly, the due process concerns of defendants are paramount and the constitutional guarantees to a fair trial must be staunchly safeguarded. . . . Further, the court's management of the trial must not impinge on the prosecutorial function. . . . Practical considerations, such as the imposition of a lengthy trial upon a jury, also are relevant." *Cousar*, 2007 WL 4456798 at *2. In *Cousar*, the court rejected the estimated seven weeks for trial and limited the prosecution to forty hours of trial time and each of the three defendants to twelve hours. The court came to this decision after it reviewed the list of witnesses the government intended to call and evaluated the potential duplication of testimony on the thirty-nine counts in the indictment that arose from what amounted to only three events; it also compared the time consumed in other trials in the district.

When setting time limits, federal judges have recognized that the court has a different interest than do the lawyers.

> A court cannot rely on the attorneys to keep expenditures of time in trying a case within reasonable bounds. The perspective of the court and the attorneys in trying a case differ markedly. A judge wants to reach a just result in the case and to do so expeditiously and economically. An attorney's primary concern is to WIN the case. If he believes he can win that case by proliferating the evidence of the favorable, but relatively uncontested matters so that the weaker aspects of the case will be camouflaged, it is asking too much of our fallen nature to expect him voluntarily to do otherwise. *Reaves*, 636 F. Supp. at 1578.

Preference for time limits over other restrictions

An advantage of setting time limits, as opposed to restricting the number of witnesses or other methods of speeding up a trial, is that lawyers retain control of the case. "It is for the parties, and not the court, to make the determination about which witnesses are truly necessary and, in addition, how much of each witness' testimony is necessary." Enright v. Auto-Owners Ins. Co., 2 F.Supp.2d 1072, 1074 (N.D. Ind. 1998). "It reduces the incidence of the judge interfering in strategic decisions. It gives a cleaner, crisper, better-tried case." *Reaves*, 636 F. Supp. at 1580 (quoting Leval, *From the Bench, Litigation*, at 8 (1985)). "It is counsel rather than the court who decide what evidence is to be admitted and what is to be pruned." *Reaves*, 636 F. Supp. at 1580.

Standard of review on appeal

A federal trial court's use of time limits is reviewed on appeal for abuse of discretion. Sec'y of Labor v. DeSisto, 929 F.2d 789, 795 (1st Cir. 1991) ("the practice of fixing a period of time for the trial 'is not, *per se*, an abuse of discretion'") (quoting MCI Commc'ns Corp. v. American Tel. & Tel. Co., 708 F.2d 1081, 1171 (7th Cir. 1983)). Although there is "a pronounced preference to defer to the district court's discretion, particularly in this delicate area," a limit will be reversed if it "prevented both parties from presenting sufficient evidence on which to base a reliable judgment." *DeSisto*, 929 F.2d at 796 In *DeSisto*, the circuit court reversed the trial court because, in

addition to the time limit, the judge had restricted each side to one witness in a wage and hour dispute involving 244 employees. The trial judge could have divided the employees into categories and allowed one representative witness for each, but the plan he adopted, which allowed only one witness per side, elevated the desire to conserve judicial resources above the need for a full understanding of the facts.

Review of case before setting limits

For time limits to be reasonable and not arbitrary, a trial judge needs to review the case and consider the evidence each side intends to proffer. Generally time limits should be imposed only after the court has made "an informed analysis based on a review of the parties' proposed witness lists and proffered testimony, as well as their estimates of trial time." *Duquesne Light Co.*, 66 F.3d at 610. When a court sets limits on presentation of evidence, even before the listing of proposed witnesses, it will be considered "an apparently arbitrary limitation imposed in the interest of conserving judicial resources." *DeSisto*, 929 F.2d at 795.

Enforcement of limits

When time limits are set, "the court must ensure that it allocates trial time evenhandedly." *Duquesne Light Co.*, 66 F.3d at 610. That does not necessarily mean each side must receive the same amount of time. In a complicated case, for example, the "presentation of a competent defense may require more time than presentation of a plaintiff's case-in-chief." MCI Commc'ns Corp., 708 F.2d at 1172.

A judge should set and announce time limits before a trial starts, and "the time limits should be sufficiently flexible to accommodate adjustment if it appears during trial that the court's initial assessment was too restrictive." *MCI Commc'ns Corp.*, 708 F.2d at 1171. Each party should be allowed to fill its time allotment with whatever evidence it deems appropriate, subject to rules of admissibility. "As a corollary, an allocation of trial time relied upon by the parties should not be taken away easily and without warning." *Duquesne Light Co.*, 66 F.3d at 610. In *Duquesne Light Company*, a case involving a dispute over construction of a nuclear power plant, the judge told the parties at the pretrial conference that each would have 140 hours of trial time. Twelve days into the trial, however, the judge grew frustrated with duplicative evidence and thought the jury was getting confused. He then told the parties they would each have twenty-two days but that a day at which any testimony was heard would count as a full day. Duquense objected and argued that it was being prejudiced against because it had timed its presentation during the first eleven days on the premise that it would have 140 hours total. The appellate court did not reverse the decision because it was not convinced the midtrial change of rules had affected its outcome, but it did admonish the trial judge for his handling of the case.

Time limits should not be so strict and enforced so rigidly that they result in behavior that is disruptive to the judicial process. "But to impose arbitrary limitations, enforce them inflexibly, and by these means turn a federal trial into a relay race is to sacrifice too much of one good—accuracy of factual determination—to obtain another—minimization of the time and expense of litigation." McKnight v. Gen. Motors Corp., 908 F.2d 104, 115 (7th Cir. 1990). The judge in *McKnight* counted all time spent arguing objections against the party whose evidence was being challenged, which caused a spectacle of witnesses running to and from the stand. After numerous evidentiary objections from the other side, General Motors was left with forty-nine minutes for its remaining four witnesses, "and we were told at argument without contradiction that these

witnesses *ran* to and from the stand in a desperate effort to complete their testimony before time was called." *Id.* (emphasis in original).

Guidance on setting limits

One federal court, reviewing various means of controlling trials, stated that "(1) the court must impose no restriction that causes the information presented to become incomprehensible; and (2) no restriction or limitation should be imposed arbitrarily." United States v. Hildebrand, 928 F. Supp. 841, 848 (N.D. Iowa 1996). With those general principles in mind, the court offered the following guidelines for setting time limits or otherwise restricting the presentation of evidence at trial.

> (1) [L]imitations must only be imposed when necessary to the just and efficient presentation of evidence . . . ; (2) limitations should be made on the basis of an informed analysis, including review of proposed witness lists and proffered testimony, exhibits, or estimates of trial time; (3) no limitation may be imposed without balancing probative value against issues of delay, confusion or waste . . . ; (4) the parties should be allowed to decide how best to use whatever allotment is given them; (5) any pretrial limitations must be flexibly administered during trial to prevent any sacrifice of justice to efficiency; (6) changes in allotments, either admitting additional evidence or testimony or precluding more evidence or testimony than anticipated, must only be made with notice and upon a determination of need. *United States v. Hildebrand*, 928 F. Supp. at 848–49.

Control of Evidence in State Court

Different context for time limits

In state court, time limits tend to arise in an entirely different context than they do in federal court. It appears from the appellate decisions that federal judges usually face time limit questions when they try to determine how to move along large, complicated cases or cases that have lingered because of over-lawyering during the discovery and motions phase. Although such situations arise occasionally in state court, routine district court family law cases face the time limit question much more frequently. In an effort to move the huge volume of family law disputes that easily could overwhelm the court, some districts have established local rules placing tight time limits on presentation of evidence and argument in temporary custody or child support or similar hearings—typically an hour total, or even only half an hour—for witnesses plus argument plus the judge's time to read affidavits. There are no state appellate decisions addressing time limits on trials, but the general principles and considerations that would apply are much the same as in the federal system.

Inherent authority to control trials

North Carolina law has long recognized the inherent authority of trial judges to control their courtrooms and dockets. In some instances the inherent authority is said to derive from the separation of powers. "A court's inherent authority is that belonging to it by virtue of its being one of

three separate, coordinate branches of government." *In re* Alamance County Court Facilities, 329 N.C. 84, 93 (1991). At other times inherent authority is considered to arise from necessity; it is the power essential for a court to function as a court. "Inherent power is essential to the existence of the court and the orderly and efficient exercise of the administration of justice." Beard v. N.C. State Bar, 320 N.C. 126, 129 (1987). Regardless of the conceptual basis, the scope of the inherent authority is broad. "Through its inherent power the court has authority to do all things that are reasonably necessary for the proper administration of justice." *Beard*, 320 N.C. at 129.

Additionally, Article I, Section 18 of the North Carolina Constitution provides: "All court shall be open; every person for injury done him in his lands, goods, person or reputation shall have remedy by due course of law; and right and justice shall be administered *without favor, denial, or delay*." A nearly identical provision in the Kentucky Constitution was cited as support for imposing time limits in the influential federal court decision in *United States v. Reaves*, 636 F. Supp. 1575 (E.D. Ky. 1986). *See also* Hicks v. Commonwealth, 805 S.W.2d 144 (Ky. 1990).

State rules of evidence and practice

North Carolina has rules of evidence that are similar to those cited by the federal courts as the authority for control of trial proceedings. Just like their federal counterparts, North Carolina Rule of Evidence 102 states the rules of evidence are to be construed to secure "elimination of unjustifiable expense and delay;" North Carolina Rule of Evidence 403 allows the exclusion of relevant evidence if its probative value is outweighed "by considerations of undue delay, waste or time, or needless presentation of cumulative evidence;" and North Carolina Rule of Evidence 611 directs the court to exercise control over the questioning of witnesses and presentation of evidence to "avoid needless consumption of time."

The General Rules of Practice for the Superior and District Courts, adopted by the North Carolina Supreme Court, provide another layer of authority, not present in the federal system, for time limits. Rule 1 states that the General Rules of Practice are to be construed and enforced "in such manner as to avoid technical delay and to permit just and prompt consideration and determination of all the business before them [superior and district courts]." Rule 2 of the General Rules of Practice then requires the senior resident superior court judge and chief district judge to develop a case management plan for calendaring civil cases. Those plans often include goals for resolving cases within a certain number of days.

A more explicit recognition of time limits appears in Rule 23 of the General Rules of Practice. That rule allows a superior court judge, with the agreement of the parties, to order a summary jury trial with limits on the time allowed for presentation of evidence and argument. Under Rule 23.1 of the General Rules of Practice, a summary procedure also is allowed for significant commercial disputes, which includes time limits on presentation of evidence ("Absent contrary court order, the trial shall be limited to five days, which shall be allocated equitably between the parties.").

Rule 2 of the General Rules of Practice provides the authority to adopt local rules. Rule 40 of the North Carolina Rules of Civil Procedure likewise directs the senior resident superior court judge to adopt local rules for calendaring civil cases. Each district has a set of local rules, though their length varies considerably. A few districts have only a handful of rules, generally addressing only the case calendaring process, while others have dozens of pages covering everything from continuances to reimbursement for representation of indigents to adverse weather to professional courtesy. In a few instances the rules for superior court civil matters specify time limits when agreed upon by the parties. In Mecklenburg County, for example, the parties may

request to be placed on the "five-minute firecracker" motions calendar in which each side is limited to five minute arguments. Rules declaring specific time limits for cases appear most frequently in the rules adopted by district courts for family domestic cases.

Time limits in domestic cases

Some district court districts have lengthy and detailed local rules about the handling of domestic cases. In some of the districts, the rules place limits on the hearing of particular matters such as temporary custody or temporary child support. The rules might say, for example, that a hearing will be conducted solely on the basis of affidavits, and limit the number of affidavits, unless an exception is granted by the judge. In some instances the rules may be backed by other authority, such as the provision in North Carolina General Statute 50-16.8 that post-separation support hearings may be based solely on affidavits.

In some districts, especially the larger and busier urban districts, the local rules also include time limits for hearings. In Mecklenburg County, for example, the family court rules state that in hearings on post-separation support each side is limited to thirty minutes for direct and cross-examination and argument, though the parties may move for additional time in complicated cases. Mecklenburg County rules also allow parties to agree to have an equitable distribution case heard as an expedited case with each side given one hour to present its evidence and argument. In Durham County each party is limited to thirty minutes in hearings for temporary child custody, temporary child support, post-separation support, and so forth. The use of affidavits, limited to five, is encouraged, and the rules allow the judge to count the time spent reading the affidavits against a party's time limit. Wake County likewise limits each side in temporary hearings in family law cases to thirty minutes for opening statements, examination and cross-examination of witnesses, and closing arguments. The parties may request additional time for complicated cases. Evidence in temporary child support hearings is to be solely by affidavit unless good cause is shown for live testimony.

Deference given to local rules

To the extent that time limits are prescribed in local rules, or are used as a means of implementing local rules on caseflow, trial courts can expect considerable deference from the appellate courts. In *Forman & Zuckerman, P.A. v. Schupak*, 38 N.C. App. 17, 247 S.E.2d 266 (1978), the defendant's appeal in a lawyer's fee dispute was based partly on the court calendaring a motion for default judgment in violation of a local rule. The court of appeals rejected the argument, stating that because local rules "are adopted to promote the effective administration of justice by insuring efficient calendaring procedures . . . Wide discretion should be afforded in their application so long as a proper regard is given to their purpose." 38 N.C. App. at 21. *See also* Pinney v. State Farm Mutual Ins. Co., 146 N.C. App. 248, 253, 552 S.E.2d 186, 189 (2001) ("trial court has wide discretion in the application of local rules" and will be reversed only for abuse of discretion).

The extent of a trial court's discretion to control court time was emphasized in *Roberson v. Roberson*, 40 N.C. App. 193, 252 S.E.2d 237 (1979), when the defendant in a civil contempt proceeding objected to being denied the opportunity to make a closing argument to the court. After finding that "the power of the trial judge to maintain absolute control of his courtroom is essential to the maintenance of proper decorum and the effective administration of justice," the court of appeals found it wholly within the discretion of the trial judge whether to allow argument in a nonjury trial (a statute provided a right to counsel to argue to the jury). In *Keene v.*

Wake County Hosp. Systems, 74 N.C. App. 523, 328 S.E.2d 883 (1985), the court found no abuse of discretion in the trial judge limiting lawyers' opening statements to five minutes each in a medical malpractice case in light of the provision in Rule 9 of the General Rules of Practice, which states, "Opening statements shall be subject to such time and scope limitations as may be imposed by the court." Given the inherent authority of the trial judge to control courtroom proceedings, as demonstrated by *Roberson*, the five-minute time limit certainly would have been upheld even if there were no Rule 9.

Appellate cases on restricting trial evidence

Few cases involving a trial judge's restrictions on presentation of evidence have reached the appellate courts in North Carolina, and their guidance is mixed. On the one hand, the panel in *Ange v. Ange*, 54 N.C. App. 686, 284 S.E.2d 187 (1981), easily affirmed the trial court's decision to limit the number of witnesses to testify about the plaintiff's mental ability to make a deed. Five witnesses testified, but another thirteen were excluded because they were going to say essentially the same thing. The decision in *Ange* seems simple enough because of the repetitive and cumulative nature of the testimony. The court stated, "It is clear that a trial judge, in his discretion, may limit the number of witnesses that a party may call so as to prevent needless waste of time." *Id.* at 687. As discussed above, the current North Carolina Rules of Evidence support that authority.

On the other hand, in *Murrow v. Murrow*, 87 N.C. App. 174, 359 S.E.2d 811 (1987), the court of appeals reversed a trial judge who allowed evidence to be presented only by affidavit in an equitable distribution case. The appellate court cited Rule 43(a) of the Rules of Civil Procedure which states, "In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules." In the court's view that meant the trial judge could not exclude oral testimony altogether, but the court did not address whether the judge could limit the testimony in other ways.

One appellate decision, *Woody v. Woody*, 127 N.C. App. 626, 492 S.E.2d 382 (1997), speaks more directly to a party's right to present evidence. As was his standard procedure in child custody cases, the trial judge had informed the parties that each side would be limited to four witnesses. When three of the father's witnesses unexpectedly emphasized the child's lack of cleanliness while in the mother's care, the mother asked to call an additional rebuttal witness. The trial judge refused because she already had called her four witnesses to present her case in chief. The court of appeals reversed the decision, holding that the trial judge had abused his discretion. Agreeing with the general proposition that a trial judge may limit witnesses who will be offering cumulative testimony, the court of appeals found that the judge went too far in sticking to the four-witness limit when the cleanliness issue became more significant than it originally appeared. The best interest of the child is the "polar star" in a custody dispute, and the trial judge should not have shut off important evidence on that issue.

The important point of *Woody*, although not explained at any length by the court, is that a party has a right to make its own case. Although a trial judge may bar repetitive testimony and otherwise control the presentation of evidence to keep the case moving, efficiency cannot override the need for a full and fair presentation of the case.

Guidance on Time Limits in State Court

Superior and district court judges may set time limits on trials and hearings, but they must be careful in how they do so. The authority comes from the inherent authority of trial judges in North Carolina to control the flow of a case, the state constitutional provision promising justice "without delay," the state rules of evidence and practice stressing the importance of efficiency, the case management responsibility given to senior resident superior court judges and chief district judges, and the deference afforded local rules by the appellate courts. Based on the general state law on management of cases, and the federal case law on time limits, the following advice is offered.

- A trial judge has the authority to control the presentation of evidence to crisply move a case along, whether it be by forbidding duplicative evidence, limiting lawyers' arguments, or setting reasonable time limits.
- When imposing any restriction on the presentation of evidence, whether it be limiting witnesses or setting time limits, a trial judge must balance the need for efficiency and preservation of limited court resources against the need for a full presentation of the case.
- When setting time limits for a specific case, a judge should first learn enough about the case to be sure that the limits are appropriate and then be flexible when implementing them.
- Local courts have broad discretion to set rules, including time limits, on case management and can expect considerable deference from the appellate courts.
- Time limits set by local rules for particular categories of domestic cases seem to be a reasonable response to the large volume of cases in need of processing and quick resolution.
- Local time-limit rules should be applied flexibly to accommodate the circumstances of individual cases that may make the time allotment inappropriate.
- The overriding concern in each case is for a judge to hear all the evidence necessary to make a fully informed decision, and time limits should never be applied so as to exclude critical information.

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